

Charter Commission Training

July 14, 2021

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Agenda

I. Charter 101

II. Local Government Jurisdiction

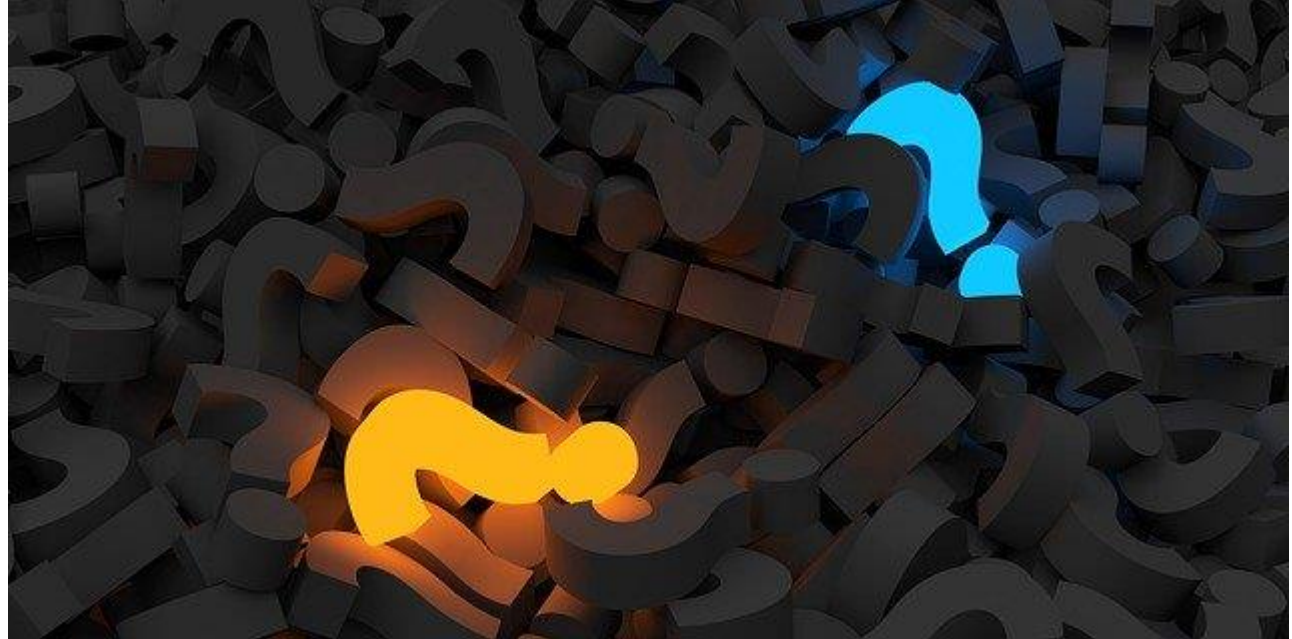
III. Preemption

IV. City Attorney's Office Support:

- Mental Health
- Houselessness
- Affordable Housing

V. Ballot Measure 101

VI. Q&A



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I. Charter 101



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City Charters

Model Charter (i.e. best practices)

- Function as city's constitution
- Basic, broad fundamentals of city government
- Concise:
 - Avoid need for frequent amendment



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Charter v. Code

U.S. Constitution; U.S. Code

Oregon Constitution; Oregon Revised Statutes

Portland Charter; Portland Code

Function of Charter

- Creates city as legal entity
- Authorizes city powers
- Amended by city voters

Function of Code

- Day-to-day operations
- Regulates public health, safety and welfare
- Amended by city council



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Model Charter: League of Oregon Cities

Provisions

- Names and Boundaries
- Powers
- Council
- Legislative Authority
- Administrative Authority
- Quasi-Judicial Authority
- Elections
- Appointive Officers
- Personnel
- Public Improvements
- Miscellaneous



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Model Charter: League of Oregon Cities

- Updated in 2019
- Annotated
- www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf



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Model Charter: League of Oregon Cities

Portland's Charter Roughly Follows Model

Form of Government:

- City Manager v. Commission

Day-to-day operations:

- Accounting procedures
- Utility franchising procedures
- Charter review process



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Portland Charter

Chapters

- Corporate Existence and Powers
- Government
- Nominations and Elections
- Civil Service
- Fire and Police Disability, Retirement and Death Benefit Plan
- Finance
- Advertising and Contracts
- Local Improvements; Assessments; Collections
- Public Utilities and Franchises
- Special Services
- Public Facilities and Works
- Charter Revision and Interpretation
- Prosper Portland



Evolution of Portland Charter

- **1851:** Portland first incorporated by the territory of Oregon
 - 1859: Oregon granted statehood
 - OR Supreme Court adopted Dillon's Rule in 1882
- **1906:** Oregon voters adopt home rule constitutional amendments
- **1913:** Portland voters approve new charter, adopt commission form of government



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Evolution of Portland Charter

- 1912: Prominent residents commissioned an independent evaluation of Portland city government, in anticipation of proposing a new commission form of government at the 1913 election.
- Independent evaluation findings:
 - City “still managing its affairs in much the same manner” as it had in 1891
 - Existing ward system pitted neighborhood against neighborhood
 - 15-member council too big for clear accountability



Evolution of Portland Charter

- 1913: Portland voters adopt Commission form of government
 - Galveston Plan:
 - Great Storm of 1900; Galveston, TX effectively obliterated
 - City government reorganized as a commission to facilitate ease of rebuilding, with each Commissioner responsible for one bureau
 - ~500 U.S. cities adopted commission government by 1920
 - Fell out of favor after WWII
 - Galveston switched to council-manager government in 1960
 - Portland adopted in 1913
 - Of 30 most populous cities in U.S., only Portland continues to have commission form of government



Past Votes on Portland Form of Government

| Election Date | Ballot Title Subject | Votes |
|------------------|---|---------------------------|
| May 3, 1913 | Provide Commission Form of Government | YES: 17,317 NO: 17,025 |
| June 4, 1917 | Abolish Commission Form of Government | YES: 14,196 NO: 32,086 |
| November 2, 1927 | Simplify & Retain Commission Form of Government | YES: 27,388 NO: 29,087 |
| June 28, 1927 | Simplify & Retain Commission Form of Government | YES: 7,459 NO: 38,454 |
| May 16, 1958 | Council-Manager Form of Government | YES: 55,283 NO: 61,821 |
| May 24, 1966 | Changing Form of City Government | YES: 41,848 NO: 68,158 |
| May 21, 2002 | Changing Form of City Government | YES: 29,730 NO: 94,179 |
| May 15, 2007 | Changing Form of City Government | YES: 18,880 NO: 60,608 |



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Charter Commission

Purpose

- Ensure charter reflects needs of the community the charter serves:
 - Overhaul of charter needed?
- Ensure city charter is up to date:
 - Any housekeeping amendments needed?



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Charter Commission

- Meaning of independence
 - Propose broad set of amendments that essentially overhauls Charter;
 - Propose narrow amendments in specific areas; OR
 - Propose both types of amendments
- Limits on authority
 - Make recommendations to voters, voters ultimately decide
 - Cannot create new bureaus – no independent legislative authority
 - Unfettered speech as individual
 - Limits when speaking on behalf of Commission or City



History of Specific Charter Sections

Section 1-108. Mandatory Weatherization for Existing Buildings Requires Vote of the People.

Except for the provisions of the Building Code of the City of Portland in effect on September 1, 1979, the Council of the City of Portland shall not pass or enforce any ordinance, resolution, law or program mandating weatherization for any building or structure built in the City of Portland prior to September 1, 1979, unless such ordinance, resolution, law or program is referred to the citizens of Portland for a vote. [Add. Nov. 4, 1980.]

- City of Portland Auditor Website, Elections History (1942-present):
<https://www.portlandoregon.gov/auditor/27119>
- Multnomah County, Voters' Pamphlet, Elections History (1993-present):
<https://multco.us/elections/november-9-1993-special-election>



Questions on city charters?



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II. Local Government Jurisdiction



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Government Authority: Who Does What?

Federal Government

- Created at national level, applies to entire nation
- U.S. Constitution; U.S. Congress
- Jurisdiction:
 - Immigration, bankruptcy, patents, Social Security, civil rights

State Government

- Created at state level, applies in that specific state
- Oregon Constitution; Oregon Legislature
 - Criminal law, real estate, family law, business contracts



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Oregon and Portland

Finance and Taxation

- Cities preempted from taxing cigarettes, alcohol and federal benefits
- Cities must comply with state local budget law and municipal audit law

General Governance and City Services

- Cities free to choose form of government
- Cities must comply with state public contracting code and state public records and meetings laws

Land Use and Development

- Cities must comply with statewide land use planning program

Personnel

- Cities preempted from adopting local minimum wage and sick leave requirements

Regulatory Authority

- Cities preempted from regulating drones, building codes, pesticides, vehicle code offenses



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Portland and other Local Governments

PDC/Prosper Portland

- Urban renewal agency for Portland
 - Programs to support small businesses, improve access to workforce training and create jobs for residents

Multnomah County

- Circuit Court/Criminal Justice
- Health Department, including Mental Health
- Property Taxation
- Library
- Animal Services
- Elections

Metro

- Region's Land Use
- Region's Solid Waste System
- Parks/Venues
 - Oregon Convention Center, Zoo, Expo Center, Portland's Centers for the Arts

TriMet

- Provides bus, light rail and commuter rail service in Portland region

Tribes

- City of Portland Tribal Relations Director, Laura John



Questions on local government jurisdiction?



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III. Preemption



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City Government: Source of Power

Two sources of city power

- Derived from states – Dillon's Rule
- Derived from people – Home Rule



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City Government: Source of Power

Dillon's Rule

- U.S. Constitution does not explicitly acknowledge local governments
- U.S. Supreme Court
 - Cities lack inherent powers
 - Possess only those powers delegated by the state
- Dominated 19th and early 20th centuries
- OR Supreme Court adopted in 1882



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City Government: Source of Power

Home Rule

- Populist movement across nation to redistribute power over local government to people
- 1906: Oregon voters amend OR Constitution to grant cities “home rule”
 - **Article XI, section 2**
 - “The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the state of Oregon.”
 - **Article IV, section 1(5)**
 - The initiative and referendum powers are “reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”



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Oregon Home Rule Today

United States

- ~40 Dillon's Rule States
- ~10 Home Rule States
- Oregon arguably has strongest home rule authority in nation, although courts continue to evolve home rule doctrine

All 241 Oregon cities have home rule charters



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Oregon Home Rule and Preemption

La Grande/Astoria v. PERB, 281 Or 137 (1978)

- Is legislative action a valid exercise of constitutional authority?
 - Legislature prohibited from enacting or amending a city charter
 - Legislature free to pass legislation that preempts a city charter or ordinance if the Legislature is addressing a social, economic or regulatory objective
- Is city action a valid exercise of home rule authority (two-step test)?
 1. Is the city action authorized by the city charter or by a state statute, and
 2. Does the city action contravene state or federal law



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Preemption Test

1. Is the city action authorized by the city charter or by a state statute, and
2. Does the city action contravene state or federal law:
 - a) Express preemption
 - Legislature intended to preempt local lawmaking authority.
 - b) Implied preemption
 - State and local law cannot operate concurrently.



Express Preemption

Courts presume Legislature does NOT mean to preempt local civil authority.

Did Legislature unambiguously intend to preempt local government?

- Example: City cannot regulate cell phones in motor vehicles because ORS 801.038 states, “**A city, county or other local government may not enact or enforce any charter provision, ordinance, resolution or other provision** regulating the use of cellular telephones in motor vehicles.”



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Implied Preemption

Courts presume Legislature does NOT mean to preempt local civil authority.

Is compliance with both state law and local law impossible?

- Example: Former state building code mandated single-wall construction, and city is free to require double-wall construction because compliance with both construction standards is possible.



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Oregon's Statutory Preemptions of Home Rule

- League of Oregon Cities Guide to Preemption
- Updated in 2020
- www.orcities.org/application/files/3116/0374/8436/StatutoryPreemptionGuideOct2020Update.pdf



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Questions on preemption?



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IV. Support from City Attorney's Office



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City Attorney's Office

One Client = City of Portland

- Elected officials, officers and employees acting on City's behalf
 - Preservation of attorney-client privilege
- Julia Meier, Charter Commission Project Manager
 - Coordinates Charter Commission's legal requests
- Not individual members of the public



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City Attorney's Office

Charter Commission Support

- Training
- Compliance with public meetings, public records laws
- Legal analysis of questions coordinated through Julia
- Legal framework on issues of interest
 - Mental health
 - Houselessness
 - Affordable housing
- Ballot measures
 - Preparation and legal defense



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IV(a) Mental Health

City Charter

- Section 4-101. Merit Principle. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit. . .without regard to. . .mental or physical disability(.) The goal of the merit system is a workforce that reflects the aspirations and values of the City it serves.
- Similar references appear throughout the Charter, but it is otherwise silent.



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IV(a) Mental Health

City Code

- Chapter 3.28. Bureau of Health.
 - *3.28.010. Transfer of Functions.* During the term of a contract presently existing between the City and Multnomah County whereby functions of the City's Bureau of Health are being performed by the County, and the County Health Officer is acting as the City Health Officer, and all Bureau of Health Employees, are now County employees, the Multnomah County Department of Medical Services shall perform the functions heretofore performed by divisions of the City Health Bureau, as set forth in this Chapter.
- Contract between City and Multnomah County authorized by Ordinance No. 126782 in 1968.



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IV(a) Mental Health

Fire & Rescue

- Portland Street Response: non-police response to assist people experiencing houselessness or a behavioral/mental health crisis
 - Team:
 - Program manager
 - Firefighter/paramedic
 - Mental health clinician
 - Community health workers (x2)
- Pilot will ramp up to include teams across the City in 2022



IV(b) Houselessness

City Charter

- Section 1-101. Continuation and Grant of Corporate Powers. The municipal corporation now existing and known as the City of Portland . . . Shall have the right of possession, use and control of all public parks and levees, buildings and property, and all tracts of land and rights or easements in land belonging to said City, and other property which has been or may be hereafter dedicated to the City or to the public, or in any manner obtained for public or corporate purposes of said City . . [.]
- General powers over land (public and private), such as the right to acquire, use, dictate activities, regulate and enforce conformance to the law.



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IV(b) Houselessness

City Charter

- Section 2-105. Continuation of Specific Powers. The City of Portland by its Council has power and authority:
 - (a)(1) To exercise within the City and City-owned property, all the powers commonly known as the police power . . . , and to make and enforce within said areas all necessary or appropriate water, local, police, sanitary and safety laws and regulations.
 - (a)(2) To secure the protection of persons and property and to provide for the health, cleanliness, ornament, peace, safety and good order of the City.
 - (a)(23) To regulate and control for any and every purpose the use of streets, highways, alleys, sidewalks, public thoroughfares, and public places within the City and City parks and properties within or without the City, and to regulate the use of streets, roads, highways and public places for transportation or use of every description, and for installation of any kind.



IV(b) Houselessness

City Charter

- Section 2-105. Continuation of Specific Powers. The City of Portland by its Council has power and authority:
 - (a)(25) To . . .prevent obstructions within the public streets, sidewalks and places and to make all needful regulations to keep and maintain the public streets, sidewalks and places in a clean, open and safe condition for public use[.]
 - (a)(35) To regulate the construction, care, use and management of buildings and structures in the City for the better protection of the lives and health of persons dwelling in or using the same or of the public, and for the public welfare.
 - (a)(37) To prevent the erection or cause the removal, demolition or repair of buildings or structures wherever situated, found to be unsafe or dangerous to the occupants, to passers-by or to other property, or which are found to obstruct a street[.]



IV(b) Houselessness

City Charter

- Section 2-105. Continuation of Specific Powers. The City of Portland by its Council has power and authority:
 - (a)(44) To prevent and remove nuisances, to declare what shall constitute the same, to punish persons committing or suffering nuisances, to provide the manner of removal of nuisances[.]
 - (a)(47) To prevent trespassing and punish trespassers upon real and personal property.



IV(b) Houselessness

City Charter

- Section 15-103. General Powers and Duties (Portland Development Commission). In carrying out its affordable housing duties, the Commission shall promote home ownership and the creation and retention of multifamily housing, and implement other housing policies that may be adopted by the Council, through acquisition of property, real or personal, or interest therein, through financial and technical assistance to private and nonprofit housing developments and organizations, renters, homeowners and homebuyers, or through any other mechanism authorized by Council.
- Overall, the Charter authorizes management of property for the public order and safety and creates an affirmative duty to develop affordable housing.



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IV(b) Houselessness

Code

- Bureaus with property management authority over public lands:
 - Portland Bureau of Transportation
 - Bureau of Environmental Services
 - Office of Management and Finance
 - Portland Water Bureau
 - Parks and Recreation
 - Portland Housing Bureau



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IV(b) Houselessness

Code

- Regulatory programs:
 - Rules of Conduct at City Property (PCC 3.18.020)
 - Conduct Prohibited on Public Property (PCC 14A.50)
 - Camping prohibited on public property and public right of way
 - Sidewalk use
 - Authority to Restrict Access to Certain Areas (PCC 14C.30.010)
 - Prohibited Conduct (at City Parks) (PCC 20.12)



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IV(b) Houselessness

Code

- PCC 3.15.060(C)(6). The Office of the Chief Administrative Officer is responsible for the following: Prioritize and undertake cleanup of unauthorized camping at City owned or managed real property without obtaining authorization from the bureau to which the property is assigned and at other governmental properties upon intergovernmental agreement. The Office of Management and Finance may consult with impacted public and private property owners. This grant of authority is in addition to the property managing bureau's authority to undertake property management for its assigned property but the bureau will coordinate with Office of Management and Finance before the removal of personal belongings.
 - Ordinance No. 190478 (6/20/2021)



IV(b) Houselessness

City Policy

Declaration of Housing Emergency.

- Authorizes siting of day storage units
- Expedites design review for affordable housing
- Develops mandatory inclusionary housing program
 - Ordinance No. 187371 (10/5/15); effective through 10/7/2016
 - Ordinance No. 187973 (9/7/16); effective through 10/6/17
 - Ordinance No. 188627 (10/4/17); effective through 4/4/19
 - Ordinance No. 189387 (2/21/19); effective through 4/4/21
 - Ordinance No. 190342 (3/31/21); effective through 4/4/22



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IV(b) Houselessness

City Policy

Homelessness and Urban Camping Impact Reduction Program.

- www.portlandoregon.gov/toolkit/
- Program housed in Office of Management and Finance
- Helps connect campers with social services and shelter options
- Coordinates and prioritizes cleanup and abatement of unsanctioned campsites on City-owned or managed lands, including land within City owned by the Oregon Department of Transportation
- Reduces impacts of unsanctioned campsites by removing hazardous debris, installing porta-potty and mobile showers and syringe dropboxes
- Manages One-Point-of-Contact campsite reporting system



IV(b) Houselessness

City Policy

HOU 2.01 Home Again: A 10-Year Plan to End Homelessness in Portland and Multnomah County.

- www.portland.gov/policies/housing/homelessness/hou-201-home-again-10-year-plan-end-homelessness-portland-and
- www.portland.gov/sites/default/files/2020-06/hou-02-01-exhibit-105025.pdf
- Resolution No. 36367 (12/21/05)
 - Directed implementation of the 10-year plan, with steps to support housing for the chronically homeless population and accountability in the system.



IV(b) Houselessness

City Policy

Joint Office of Homeless Services.

- www.multco.us/joint-office-homeless-services
- County agency
 - Financially supported by City and County
 - Administers contracts for services, conducts homeless street counts and one-night shelter counts, manages systems of care, oversees reporting and evaluation
 - Ordinance No. 187843 (6/22/2016)
 - Authorized Intergovernmental Agreement to create JOHS, additional ordinances have continued budget allocations



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IV(c) Affordable Housing

City Charter

- Section 1-101. Continuation and Grant of Corporate Powers.
- Section 2-105. Continuation of Specific Powers.
- Section 15-103. General Powers and Duties (Portland Development Commission/aka Prosper Portland).
 - Charter sections discussed above in Houselessness.
 - Federal and state laws (ORS Chapters 456 and 457) also apply, but are outside the scope of this presentation.



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IV(c) Affordable Housing

Code

- PCC 23.01.060. Discrimination in Selling, Renting, or Leasing Real Property Prohibited.
 - Makes it unlawful to discriminate in selling, renting, or leasing real property on the basis of an individual's race, religion, color, sex, national origin, marital status, familial status or disability.
- PCC Chapter 30. Affordable Housing Preservation and Portland Renter Protections.
 - Protects availability of publicly-assisted affordable housing:
 - Notice to City and tenants when transitions from current assistance programs and/or affordable housing uses are planned
 - Purchase opportunities for the City to preserve affordable housing
 - Tenant relocation assistance when affordable housing is converted
 - Long-term affordability in future projects that the City assists with public financing
 - Ensure that all Portland renters have additional protections
 - Ordinance No. 187380 (11/13/2015)



IV(c) Affordable Housing

Code

- Local Preservation Projects – Tenant and City Notice Provisions (PCC 30.01.080)
- Portland Renter Additional Protections (PCC 30.01.085)
- Evaluation of Applications for Dwelling Units (PCC 30.01.086)
- Security Deposits; Pre-paid Rent (PCC 30.01.087)
- City Subsidy Projects – Long-Term Affordability Requirements (PCC 30.01.090)
- Partial and Full Exemptions of System Development Charges for Affordable Housing Developments (PCC 30.01.095)
- Partial and Full Exemptions of System Development Charges for Mass Shelters, Outdoor Shelters and Short-Term Shelters (PCC 30.01.096)
- Inclusionary Housing (PCC 30.01.120; PCC 33.01.245)
- Manufactured Dwelling Park Affordable Housing Density Bonus (PCC 30.01.130)



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IV(c) Affordable Housing

City Policies

Affordable Housing Production and Preservation.

- HOU-1.01. Affordable Housing Production Goal – City of Portland
- HOU-1.02. Affordable Housing Production Goal – Urban Portion of Unincorporated Multnomah County
- HOU-1.03. Authorize Action Plan for FY 2015-16. Community Development Block Grant, HOME Investment Partnership, Emergency Solutions Grant and HUD Program
- HOU-1.04. Intergovernmental Agreement for Production of Housing-Related Plans and Performance Reports for HUD
- HOU-1.05. Designation of Block U for Resource Access Center and Affordable Housing Development
- HOU-1.06. Affordable Housing Tax Increment Financing Set Aside Policy
- HOU-1.07. Portland Housing Bureau Affordable Housing Green Building Policy
- HOU-1.08. Authorize Action Plan for FY 2018-19. Community Development Block Grant, HOME Investment Partnership Grant, Emergency Solutions Grant, and Housing Opportunities for Persons with AIDS Grant
- HOU-1.09. Creation of 2,000 Additional Supportive Housing Units – 2028 Goal
- HOU-1.10. Risk Analysis and Compliance Policies and Guidelines



IV(c) Affordable Housing

City Partnerships

- U.S. Department of Housing & Urban Development (HUD)
- Oregon Housing and Community Services (State of Oregon)
- Metro
- Multnomah County
- City of Beaverton
- City of Gresham
- Clark County Public Health



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IV(c) Affordable Housing

City Partnerships

Portland Development Commission/Prosper Portland

- City established Portland Housing Bureau and transferred affordable housing functions from Prosper Portland to PHB
- Prosper Portland and PHB now share responsibility for project development, implementation and financing
 - Ordinance No. 182465 (1/7/2009)

Joint Office of Homeless Services

- See slides above

Home Forward

- Formerly known as Housing Authority of Portland
- Independent governmental entity responsible for ownership and development of affordable housing projects



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Questions on support from City Attorney's Office?



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V. Ballot Measure 101



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Charter Commission

Submission of Recommendations to Voters

1. **Super Majority: Affirmative vote of 15 - 20 Commissioners**
 - Public hearing process prescribed by Council
 - Submitted to voters at the next election that is at least 120 days after recommendations are presented to Council
2. **Simple Majority: Affirmative vote of 11 - 14 Commissioners**
 - Recommendations presented to Council
 - Council may, but is not required to, refer recommendations to voters



Measures Referred by Council (PCC 2.04.120)

- Public official submits resolution and ballot title for placement on Council agenda
 - **Super Majority**
 - Charter Commission presents resolution and ballot title to Council at public hearing
 - **Simple Majority**
 - Charter Commission follows Council's standard process
- Upon referral, Auditor publishes notice of receipt of ballot title in newspaper and date by which an elector may challenge ballot title
 - Sufficient time for potential court challenge is critical
 - 4 months before election; 5 months if multiple ballot titles
 - Constitutional requirements: single subject; full text
 - Ballot title requirements



Ballot Title (PCC 2.04.060)

CAPTION (10 words)

- Reasonably identifies subject matter of petition.

QUESTION (20 words)

- Plainly phrases chief purpose of the measure, so that affirmative response corresponds to affirmative vote.

SUMMARY (175 words)

- Concise and impartial statement summarizing measure and major effects.



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Explanatory Statement (ORS 251.345)

- Governing body that referred measure shall submit an impartial, simple and understandable statement explaining measure and its effects.
- Published in county Voters' Pamphlet:
 - Multnomah
 - Washington
 - Clackamas



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Voters' Pamphlet

- Ballot Title
- Explanatory Statement
- Arguments in Favor
- Arguments in Opposition



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ORS 260.432

General Rule

- Public officials may not use work time to participate in political campaigns

Who is Covered

- Elected officials:
 - When directing public employees
- Appointed board and commission members:
 - When acting in official capacity
- Public employees:
 - When acting as public employee



Questions on ballot measures?



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VI. Q & A



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Thanks for listening!



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